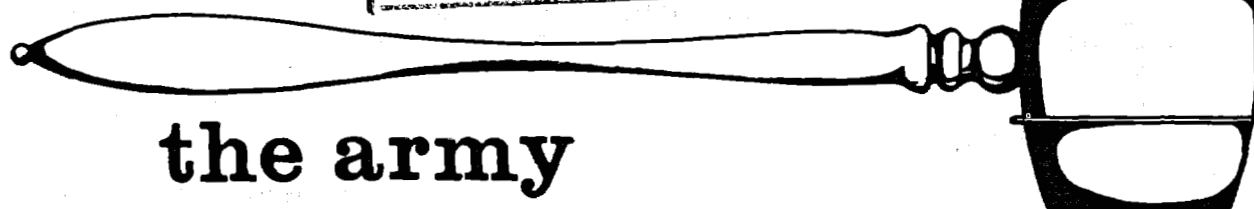


Office of the Staff Judge Advocate
ATTN: Legal Assistance
Headquarters CAC & FT LVN
Fort Leavenworth, Kansas 66027



the army

LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

**Department of the Army Pamphlet
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**ABA Informal Opinion 1474 and the
Proposed Rules of Professional Con-
duct: Some Ethical Aspects of Military
Law Practice**

*by Colonel William S. Fulton, Jr.
Chairman, The Judge Advocate General's
Professional Responsibility Advisory Committee*

The views expressed in this article are not intended to represent those of The Judge Advocate General or the Advisory Committee. Neither are they intended to represent the views of the United States Army Court of Military Review, on which the author serves as a senior judge.

Informal Opinion 1474, issued by the American Bar Association Standing Committee on Ethics and Professional Responsibility on 18 January 1982, deals with three questions relating to the operation of legal offices in the armed forces. While the committee's letter transmitting copies of its opinion repeats the standard caution that the "laws, court rules, regulations, codes of professional responsibility and opinions in the individual jurisdictions are controlling," Army Regulation 27-10 adopts the ABA Code of Professional Responsibility as the standard for our Corps in the exercise of criminal justice responsibilities. At its annual meeting in August 1982, the American Bar Association could decide to replace the present Model Code with the Model Rules of Professional Conduct proposed last year by the ABA Commission on the Evaluation of Professional Standards, chaired by Mr. Robert

REPLY TO
ATTENTION OFDEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

DAJA-ZX

5 February 1982

SUBJECT: The "LEAN" Program - Policy Letter 82-1

ALL JUDGE ADVOCATES

1. The "LEAN" (Lose Excess Avoirdupois Now) Program implements my basic policy on physical fitness and weight control as expressed in Policy Letter 81-2.
2. SJA's/supervisors will insure that overweight JAGC personnel are enrolled in a medically supervised weight control program with definite interim goals designed to achieve AR 600-9 standards within a reasonable period of time. Overweight individuals will report their progress to their SJA/supervisor on the first workday of each week. On the first workday of each month, beginning 1 April 1982, overweight individuals will submit a written report on their progress to their SJA/supervisor, with an explanation of any failure to meet interim goals of their weight reduction program. The SJA/supervisor will indorse these letters through technical channels to the Executive, OTJAG. The indorsement will include corrective measures taken by the SJA/supervisor where the weight reduction progress is unsatisfactory.
3. All JAGC personnel will participate in a regular PT program. Individuals with physical limitations will consult a physician and initiate a PT program compatible with those limitations and medical advice. In addition, all medically qualified JAGC personnel will participate in semi-annual PT tests as required by AR 600-9. SJA's/supervisors will report the names of personnel who fail to pass the test, with a description of that individual's remedial PT program, through technical channels to the OTJAG Executive. Individuals age 40 and over will be medically cleared in compliance with AR 40-501 prior to participating in any physical fitness program or testing.
4. For the most part, the physical condition and appearance of our JAGC personnel are outstanding. I fully expect that the few individuals who do not meet these standards will make significant strides toward achieving them. My goal is for a Corps of "LEAN," physically fit officers.
5. This management information requirement is exempt from control under paragraph 7-2aa, AR 335-15.
6. The "LEAN" program will be an item of interest during Article 6, UCMJ inspections.

HUGH J. CLAUSEN

Major General, USA

The Judge Advocate General

J. Kutak. Therefore, we should look at Informal Opinion 1474 in the light of both the present Model Code and the proposed Model Rules.

The first question considered in Informal Opinion 1474 is "the ethical propriety of military lawyers who work together in close proximity in the same office and who share files and support staff serving on opposing sides in a civil or criminal matter, or as counsel and magistrate in the same criminal matter." The ABA committee already had dealt with this problem in its Informal Opinion 1235 (24 August 1972) and Formal Opinion 343 (23 December 1977). (One may speculate whether those who asked the question this time had done their homework, or perhaps were hoping for a different answer.) The relevant provisions of the present Code are Disciplinary Rules 5-101(A) and 5-105(D). DR 5-101(A) specifies that—

Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR 5-105(D) adds—

If a lawyer is required to decline employment or to withdraw from employment un-

der a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment.

In its 1972 opinion, the ABA committee, noting that the opposing lawyers' duties were assigned rather than undertaken voluntarily, the assignment was by governmental authority, and the accused person could secure outside counsel, concluded that "we do not feel that representation of the government and the defendant by military lawyers from the same office necessarily offends DR 5-105 nor creates an impermissible conflict of interest." The committee in 1982 similarly has concluded as follows:

[T]here is no absolute ethical prohibition against the government furnishing counsel to opposing sides, so long as measures are undertaken to ensure that all counsel preserve the confidences and secrets of their clients and have undivided loyalty to their clients, free from any direct or indirect conflicts or pressures that would dilute the exercise of independent professional judgment and zealous representation, as required under Canons 5 and 7 of the Model Code.

This clear statement of the rule is consistent with the Uniform Code of Military Justice. There can be no doubt that, in enacting the Uniform

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Issues may be cited as *The Army Lawyer*, [date], at [page number].

Code, Congress intended that both the prosecution and defense be represented in accordance with the highest professional standards. However, in view of longstanding practice, it seems certain that Congress knew that both the trial counsel and defense counsel would come from a military unit's single staff judge advocate section. In Article 38 of the Code, Congress afforded each accused the opportunity to seek military counsel of choice and to retain civilian counsel. Coincidentally, that Article has been reenacted by Congress as recently as November 1981. Although legal assistance to military persons and their families is not similarly governed by statute, the practice of permitting separate lawyers in a single office to advise persons whose interests might be in conflict, while recognizing the requirements of independent judgment, zealous representation, and protection of confidences, is likewise one of long standing.

The question presented to the ABA committee, however, depicted the opposing lawyers as not only working "in close proximity in the same office," but also as sharing files and support staff. From such an ambiguous and incomplete description, one cannot be certain of the prevailing working arrangements. To some, the term "same office" might imply a room, where telephone conversations of one lawyer might be overheard by the other. Likewise, reference to the sharing of files and support staff might lead to speculation that the lawyers had access to one another's case files, which seems most unlikely in view of the well-understood rules concerning confidentiality. Whatever the case, the ABA committee concluded that—

[R]epresentation of opposing sides by lawyers working in the same military office *and sharing common secretarial and filing facilities* should be avoided. The Committee recognizes, however, that in the military there are sometimes emergency circumstances, such as when a trial must be conducted on the field of combat or on a submarine at sea, in which separate facilities cannot be provided. [Emphasis mine.]

As the ABA committee appears to recognize, trials "on the field of combat" or on board subma-

rines at sea are not the only pressing circumstances that may oblige us to provide opposing counsel from a single military law office. The term "emergency circumstances" appears unnecessarily restrictive, however (and scarcely differs from a draft opinion earlier circulated by the committee, which provided that only where there was no feasible alternative means of obtaining opposing counsel should the same military office provide representation to opposing sides). What is truly important is that the risks be understood and that adequate efforts be made to protect the vital ethical requirements of confidentiality, independence of professional judgment, and zealous representation.

The ABA committee also concludes that the same consideration involved in providing counsel for both sides of a controversy apply "to the situation where either trial counsel or defense counsel are employed in the same office and work in close proximity with another person who carries out judicial functions, such as magistrate duties, in the same matters handled by counsel."

The rules proposed by the Kutak Commission bearing on the matter are Rules 1.7 and 1.10(a) and (c). Rule 1.7 provides as follows:

(a) A lawyer shall not represent a client if the lawyer's ability to consider, recommend or carry out a course of action on behalf of the client *will be* adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.

(b) When a lawyer's own interests or other responsibilities *might* adversely affect the representation of a client, the lawyer shall not represent the client unless:

(1) The lawyer reasonably believes the other responsibilities or interests involved will not adversely affect the best interest of the client; and

(2) The client consents after disclosure. . . . [Emphasis mine.]

Rule 1.10 provides as follows:

(a) When lawyers are associated in a firm,

none of them shall undertake or continue representation when a lawyer practicing alone would be prohibited from doing so under the provisions regarding conflict of interest stated in Rules 1.7, 1.9 and 2.2.

. . . .

(c) Subject to the limitation of Rule 1.7, a disqualification prescribed by this rule may be waived by the consent of the affected client after disclosure.

Although there are some differences between DR 5-101(A) and the proposed Rule 1.7, the important rule for us is the imputed disqualification rule, which is Rule 1.10. According to its accompanying commentary, the Kutak Commission envisions Rule 1.10 as not a per se rule, such as would apply to the sole practitioner attempting to represent both sides, nor as a rule based merely on the appearance of impropriety. Instead, the Commission describes Rule 1.10 as requiring determination of the likelihood of actual access to information relating to representation of a client. Among relevant factors are the professional experience of the lawyer in question, the organizational structure of the law firm or association, the division of responsibility in the office, and the nature and probable effectiveness of screening procedures.

In this light, the Kutak Commission's proposed Rule 1.10 appears to leave appropriate latitude for military legal offices to provide representation for both the prosecution and defense of courts-martial, and to furnish legal assistance in civil matters to clients whose interests may be in conflict, so long as the obligations of loyalty and confidentiality, zeal, and independence of professional judgment are not in fact compromised.

The significance of this problem is not limited to the matter of a single judge advocate office furnishing counsel for opposing sides. As to the Army, the recent establishment of the Trial Defense Service may have mooted that question in criminal matters. But the same considerations apply to the situation arising when a single Trial Defense Service office must furnish counsel for each of two or more accuseds whose defenses

may be antagonistic. In my view, the practice is permissible under the same analysis.

While considering the question of furnishing counsel for both sides, the ABA committee also considered the "situation where military lawyers serving in the same office alternate prosecuting and defense functions in successive cases." This sounds as if the switching of sides on a case-by-case basis were being practiced. Staff judge advocates of busy court-martial jurisdictions know that this is both impractical and unwise. What sometimes has been necessary or desirable, however, is the rotation of defense counsel to prosecution functions, or vice versa, at the same installation after a significant period in the one function or the other. The fact that military policemen, court members, and even military judges, are moved to other duty stations at regular intervals tends to dissipate some of the awkwardness for a counsel than can arise from switching sides. Even so, Informal Opinion 1474 reaffirms the conclusion expressed in the earlier Informal Opinion 1235 that "it is highly desirable that individual lawyers be assigned to performance of one or the other functions for the duration of their service within the command, although we recognize that under the circumstances this may not always be practical."

As in the case of today's ABA Model Code, the Kutak Commission's proposed rules do not deal directly with this form of "switching sides" (as distinguished from the familiar government service-private practice "revolving door" problem). Rule 1.9, however, provides as follows:

A lawyer who has represented a client in a matter shall not thereafter:

(a) Represent another person *in the same or a substantially related matter* if the interest of that person is adverse *in any material respect* to the interest of the former client unless the former client consents after disclosure; or

(b) Use information relating to the representation *to the disadvantage of the former client* unless the former client consents after disclosure or the information has become generally known. [Emphasis mine.]

This new rule can pose a problem all its own, as anyone who has tried to communicate with a former military client can attest, but it seems not to restrict reassignment between defense and prosecution functions when successive representation is not involved.

The second question addressed in Informal Opinion 1474 is "the ethical propriety of a military lawyer serving as counsel in a criminal matter when the prosecutor, investigating officer or military magistrate exercises command authority over that lawyer, including the authority to write efficiency reports on the lawyer." The committee concluded as follows:

The ethical requirements discussed above—that a lawyer must provide zealous representation, and give unswerving loyalty to a client free from any influence that might weigh against that fidelity—clearly are violated where a military lawyer's opposing counsel in a court martial or related proceeding [or person before whom the lawyer must plead on the client's behalf in an investigation or magistrate proceeding] is an officer who has command authority over him. The sole exception is where the client has asked that the lawyer represent the client after full disclosure of the potential for divided loyalties as provided for in DR 5-101(A).

As mentioned previously, the Kutak Commission's counterpart of DR 5-101(a) is Rule 1.7, quoted above. That proposed rule has two parts: if the client's interest "will be" adversely affected by the lawyer's own interests, the representation may not be undertaken even with the client's consent; if the interest merely "might" be adversely affected, consent is possible. Military and civilian lawyers regularly argue matters of one sort or another before their supervisors, albeit not in the same sense envisioned in the request for the ABA opinion. One hopes that the military situation depicted in the request for opinion is as rare as it is unique. The ABA committee was correct in permitting informed waiver by an individual client. This would seem to be a proper application of proposed Rule 1.7(b) as well.

In 1978, Informal Opinion 1429 dealt with a

question which the ABA committee then phrased as follows:

[I]s it ethical for the military lawyer detailed to represent one accused of an offense under the UCMJ to advise his client to assert these rights [i.e., the right to individual military counsel and the right to compel the attendance of witnesses, either or all of whom are at distant locations] knowing that this may result in a lighter sentence agreement being negotiated on a plea of guilty.

The same question, asked again, is the third and final question considered in Informal Opinion 1474. In reply, the ABA committee incorporated its prior opinion by reference.

The specific concern of those who sought the 1978 opinion was that defense counsel could advise the client to request individual military counsel, or could request particular witnesses, solely to make trial on the merits unreasonably expensive to the government so it would be amenable to a plea bargain more favorable to the defense than otherwise. (The question raises several considerations suitable for treatment in a separate article, and not within the intended scope of this one.)

The 1978 ABA opinion concluded as follows:

[O]ne accused of an offense under the UCMJ has a right to plead not guilty, has the right to counsel, to a trial and to the presence at his trial of witnesses essential to his defense. Accordingly, it is our opinion that the assertion by the lawyer of some or all of those rights in the expectation that he might obtain for his client a lighter agreed sentence would not be a violation of the Code of Professional Responsibility provided there was no clear showing of conduct prohibited by DR 7-102(A) (1).

The conduct prohibited by the cited DR 7-102(A) (1) is the assertion of a position, the conduct of a defense, or the taking of other action on behalf of a client that the lawyer knows or should know would serve merely to harass another. The Kutak Commission counterpart of this rule is to

be found in Rules 3.1 and 3.2. Rule 3.1 provides as follows:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a reasonable basis for doing so . . . A lawyer for the defendant in a criminal proceeding . . . may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.2 says:

A lawyer shall make reasonable effort consistent with the legitimate interests of the client to expedite litigation.

Proposed Rules 3.1 and 3.2 do not, as to this matter, appear to require any different result than the present DR 7-102(A)(1). The recent amendment to Article 38 of the Uniform Code of Military Justice by the Military Justice Amendments of 1981, Pub. L. 97-81, now permits the service secretaries to prescribe criteria for determining the reasonable availability of requested military defense counsel. Judicious use of geographical criteria should preclude the necessity for granting any truly unreasonable requests for distant counsel. Nor, in the light of such appellate decisions as *United States v. Courts*, 9 M.J. 285 (CMA 1980), and *United States v. Mitchell*, 11 M.J. 907 (ACMR 1981), is counsel likely to be able to successfully pursue a clearly unreasonable request for witnesses.

The Standing Committee on Ethics and Professional Responsibility is to be commended for its efforts and perspicacity towards understanding military exigencies in the practice of criminal law in the armed forces, including differences from civilian practice occasioned by the Uniform Code of Military Justice.

Whether the limitation of a single office's furnishing counsel to both the prosecution and defense to "emergency circumstances" is limited to those situations in which counsel share "common secretarial and filing facilities" is not clear. A reasonable amount of ingenuity can overcome the need for such sharing by opposing advocates. Otherwise, the opinion expresses an unwelcome and unnecessary restriction not envisioned by the

Uniform Code of Military Justice and not required by the Model Code of Professional Responsibility. What is important under any circumstances, as the committee recognized, is the undertaking of "measures . . . to ensure that all counsel preserve the confidences and secrets of their clients and have undivided loyalty to their clients, free from any direct or indirect conflicts or pressures that would dilute the exercise of independent judgment and zealous representation," which also appears to be the test envisioned in the Kutak Commission's Model Rule 1.10. Experience has shown that the objective can be met within a single armed forces legal office. The principle is important, for it also holds implications for the furnishing of defense counsel for an accused person notwithstanding that another defense counsel in the same office maybe disqualified. That should not be limited to "emergency circumstances," either.

Manpower exigencies, and sometimes the career development of counsel, may warrant shifting a lawyer between prosecution and defense functions without a concomitant move to another installation. The ABA committee has noted some disadvantages which need to be taken into account when contemplating such a change in functions, but there is no per se prohibition in either the Code of Professional Responsibility or the proposed Rules of Professional Conduct, although Rule 1.9 would impose limitations or perhaps require consent when the interests of a former client in the same or a related matter became involved.

Opposing one's own military supervisor in contentious litigation, or being required to plead a client's cause before the supervisor as investigating officer, magistrate, or judge, presents ethical difficulties for both lawyers. The informed consent of the client is required. Today's Code and the rules proposed by the Kutak Commission are likewise consistent with each other in this regard. Otherwise, a challenge for cause, pursued to the appropriate authority and preserved on the record seems necessary.

The final question posed to the committee, one that seemed to envision the policing of the motives of defense counsel, is of a different na-

ture and appears to have been handled by the committee in the only way possible given the hypothetical context.

In connection with any and all of the above problems, it is well to consider an observation made in the preamble to the proposed Model Rules of Professional Conduct: "[A] lawyer's pro-

fessional responsibilities are legal duties and are prescribed in the Rules of Professional Conduct or other law. However, a lawyer is also guided by personal conscience and the approbation of professional peers." If both supervisory and supervised military lawyers conduct themselves accordingly, the prosecution and the defense will have been well represented.

Turning Over a New Alef: A Modest Proposal

LTC Norman G. Cooper, Staff Judge Advocate,
HQ, US Army Quartermaster Center & Fort Lee

In 1977, the United States Court of Military Appeals held in *United States v. Alef*¹ that the subject-matter jurisdiction requirements of *United States v. O'Callahan*² mandated an affirmative pleading of a factual basis to determine the military nexus for court-martial. Thereupon, military prosecutors were urged to concentrate on crafting factual specifications under the criteria of *United States v. Relford*,³ keeping in mind that whatever is pleaded must be proved.⁴ The

difficulties in properly pleading sufficient facts to prove subject-matter jurisdiction in drug cases plagued military prosecutors and caused considerable litigation.⁵ Nonetheless, the 1980 United States Court of Military Appeals decision in *United States v. Trottier*⁶ came within an inch of holding that the *Alef* precedent as to the pleading requirement in drug cases is perhaps vitiated: "... [V]ery few drug involvements of a service person will not be 'service-connected.'"⁷

Although the author of the *Trottier* decision⁸ avows that there is no full return to the 1969 holding in *United States v. Beeker*⁹ that drug use on or off a military installation has "special military significance,"¹⁰ the impact of *Trottier's* rationale is clearly that the *Alef* pleading requirement is ameliorated insofar as military

¹3 M.J. 414 (C.M.A. 1977).

²395 U.S. § 258 (1969).

³401 U.S. § 355 (1971). There are twelve factors which must be weighed in determining whether an offense is properly triable by court-martial:

- (1) The serviceman's proper absence from the base.
- (2) The crime's commission away from the base.
- (3) Its commission at a place not under military control.
- (4) Its commission within our territorial limits and not in an occupied zone of a foreign country.
- (5) Its commission in peace time and its being unrelated to authority stemming from the war power.
- (6) The absence of any connection between the defendant's military duties and the crime.
- (7) The victim's not being engaged in the performance of any duty relating to the military.
- (8) The presence and availability of a civilian court in which the case can be prosecuted.
- (9) The absence of any flouting of military authority.
- (10) The absence of any threat to a military post.
- (11) The absence of any violation of military property.
- (12) The offense's being among those traditionally prosecuted in civilian courts.

⁴Department of the Army Message, No. DAJA-CL, 1977/2675, 19 October 1977, Subject: USCMA Decision, U.S. v. Alef, at paragraph 3. *United States v. Ross*, 9 M.J. 726 (A.C.M.R. 1980) well illustrates the *Alef* pleading problem even under this guidance.

⁵Compare *United States v. Buckner*, 7 M.J. 541 (N.C.M.R. 1979) with *United States v. McCollum*, 6 M.J. 224 (C.M.A. 1979); see also *United States v. Graham*, 9 M.J. 556 (N.C.M.R. 1980).

⁶9 M.J. 337 (C.M.A. 1980).

⁷*Id.* at 351.

⁸Robinson O. Everett replaced Albert B. Fletcher, Jr., as Chief Judge of the United States Court of Military Appeals in 1980. Judge Everette authored the *Trottier* decision. Judge Fletcher authored the *Alef* decision and concurred in the result in *Trottier*.

⁹18 C.M.A. 563, 40 C.M.R. 275 (1969). See *United States v. Trottier*, 9 M.J. 337, 352 n.34 (C.M.A. 1980).

¹⁰*Id.* at 565, 277. Judge Fletcher, concurring in result suggests that the majority opinion in *Trottier* is a homograph of *Beeker*! *United States v. Trottier*, 9 M.J. 337, 353 (C.M.A. 1980).

prosecutors are concerned. Indeed, the decision in *Trottier* clearly invites pleadings which might properly allege that drug involvement by a service person is *per se* "service-connected." Again, no specific guidance is provided, and the holding in *Trottier* is carefully authored to not affect the *Alef* pleading requirement but to suggest that "what factors are sufficient to do so may now have changed by virtue of this opinion."¹¹ The *ratio decidendi* of *Trottier* gives some clues as to what may now be the *Alef* requirement in drug cases.

The factual predicate for the *Trottier* holding is one with circumstances supportive of "service-connection." As even Judge Fletcher (who sees in *Trottier* a "lessening of the requirement that the Government fulfill its obligation under the law to meet the letter of the law,"¹² observes, the uncontroverted facts disclose that the accused was told that the drugs he sold were to be taken onto a military installation. There is no doubt that the key to "service-connection" after *Trottier* is that a service person's use or even potential use of drugs "is so at odds with the efficient operation of the military that such conduct may be reached for prosecution and punishment by the military justice system."¹³

The *ratio decidendi* in *Trottier* begins cautiously enough with an inquiry as to "whether under current conditions any classes of off-post drug offenses are subject to court-martial jurisdiction,"¹⁴ and an attempt to establish meaningful lines as to jurisdiction.¹⁵ *Trottier*, after a review of the *Relford*¹⁶ factors, concludes that "a present-day reading and application of the *Relford* criteria is compelling in favor of court-martial jurisdiction over the vast majority of

drug offenses committed by our service persons."¹⁷ Specifically, drug offenses enjoy especial consideration because they impact on combat readiness¹⁸ as it relates to authority stemming from the war power of Congress¹⁹ and they impair the performance of military duties,²⁰ because of lack of civilian prosecutorial interests in the disposition of drug offenses committed by service persons,²¹ and because of a threat to military installations in having present persons who cannot function properly due to drug involvement.²² Given these conclusions, it does not seem difficult to discern the ultimate effect of the *Trottier* holding: Any activity of service persons involving illegal drugs can be construed as having a "service-connection."²³ After all, the mere possession of an illegal drug by a service person for whatever reason suggests conduct potentially "inimical to a fit and ready armed force."²⁴ Indeed, as Judge Fletcher remarks of the *Trottier* rationale: "Situation of the alleged acts becomes immaterial when the answer envelopes the assumed effect of drugs on the military, as set forth in the majority opinion."²⁵ Having found that *Trottier* implies nothing less than a *per se* "service-connection" with respect to a service

¹¹United States v. Trottier, 9 M.J. 337, 351 (C.M.A. 1980).

¹²*Id.* at 346 n.22.

¹³*Id.* at 351.

¹⁴*Id.* at 351-352.

¹⁵*Id.* at 352.

¹⁶*Id.*

¹⁷"Only under unusual circumstances, then, can it be concluded that drug abuse by a service person would not have a major and direct untoward impact on the military. For instance, it would not appear that the use of marihuana by a service person on a lengthy period of leave away from the military community would have such an effect on the military as to warrant the invocation of a claim of special military interest and significance adequate to support court-martial jurisdiction under *O'Callahan*. *Id.* at 350 n.28. In spite of this caveat in *Trottier*, the distant, on-leave use of marihuana was held to have "service-connection" in *United States v. Brace*, 11 M.J. 795 (A.F.C.M.R. 1981).

¹⁸*Id.* at 353.

¹⁹*Id.*

¹¹United States v. Trottier, 9 M.J. 337, 351 n.30 (C.M.A. 1980).

¹²*Id.* at 353.

¹³United States v. Norman, 9 M.J. 355, 356 (C.M.A. 1980).

¹⁴United States v. Trottier, 9 M.J. 337, 345 (C.M.A. 1980).

¹⁵*Id.*

¹⁶See note 3, *supra*.

person's involvement with illegal drugs,²⁶ what constitutes the *Alef* pleading requirement in such cases?

The *Alef* pleading requirement in light of the *Trottier* decision should, of course, be retained insofar as is necessary to place the defense on notice of the jurisdictional basis relied upon under *Relford* to establish that the drug offense is triable by courts-martial.²⁷ Nevertheless, the pleading requirement should not be so onerous as to undo *Trottier's* adoption of a measure of "service-connection" in drug cases which "turns in major

part on gauging the impact of an offense on military discipline and effectiveness. . . ."²⁸ Thus, in a simple off-installation use case, it would seem that an averment that the drug use "constitutes a direct threat to the installation, drug use by a servicemember being inimical to a fit and ready armed force,"²⁹ furnishes sufficient notice of a jurisdictional basis for prosecution.

One can only speculate as to whether such a simplified *Alef-Trottier* pleading will survive scrutiny of the United States Court of Military Appeals; *absoluta sententia expositore non indiget*.³⁰

²⁶See, e.g., *United States v. Lange*, 11 M.J. 884 (A.F.C.M.R. 1981), another case wherein the accused's marijuana use on leave remote from his installation was held to have a "service-connection" because such degraded his military organization's mission capability.

²⁷See generally "*United States v. Alef*: Punishing the Pleader for Sins of Subject Matter Jurisdiction," *The Army Lawyer*, Nov 1977, 1-5.

²⁸*Schlesinger v. Councilman*, 420 U.S. 738, 760 (1975).

²⁹Mr. Justice Powell gave recognition and tacit approval to the *per se* approach as to military drug cases in *Schlesinger v. Councilman*, 420 U.S. 738, 760 n.34 (1975). To this ob-

server, the United States Court of Military Appeals has followed an unsteady course from the *sui generis* "service-connection" of *United States v. Beeker*, 18 C.M.A. 563, 40 C.M.R. 275 (1969) to *ad hoc* approach of *United States v. McCarthy*, 2 M.J. 26 (C.M.A. 1976) and its curious corollary *United States v. Alef*, 3 M.J. 414 (C.M.A. 1977), currently culminating in a return to its point of origin in *United States v. Trottier*, 9 M.J. 337 (C.M.A. 1980). All of this can only be viewed as historical exercise of considerable legal legerdemain.

³⁰Roughly translated, "an absolute sentence needs no expositor."

Reports of Survey: AR 735-11, Revised

Administrative Law Division, OTJAG

AR 735-11, Accounting for Lost, Damaged, and Destroyed Property, 15 September 1981, contains many changes of interest to judge advocates who deal with the regulation on a daily basis. This article will review some of the more significant changes, so that judge advocates will be alert to the changes when using the revised regulation.

One of the most notable changes was brought about by Public Law 96-328, 8 August 1980. That statute, passed as an effort to establish parity between the National Guard and other component report of survey systems, made significant changes in the substantive elements of the National Guard report of survey system.¹ The statu-

tory changes have now been incorporated into AR 735-11, thereby necessitating few additional implementing guidelines within the National Guard. The new statute establishes the principle that, "[s]o far as practicable, regulations prescribed [to implement the new provisions] shall be uniform among the components of each service."² Thus, a National Guard member will only be held liable for property losses when an active member would be held liable under similar circumstances, and only to the same pecuniary degree (one month's pay is the maximum liability for most losses charged under the report of sur-

¹Pub. L. No. 96-328, 94 Stat. 1027, August 8, 1980, amending 32 U.S.C. §710. Hereafter, references to 32

U.S.C. §710 are intended to include the amended portions of that statute.

²32 U.S.C. §710(b).

vey system).³ Under the new statute, States, Territories, Puerto Rico, and the District of Columbia may only be charged for the value of property issued to them "when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction."⁴ This provision has the effect of relieving the States, etc., of liability for losses incurred during activities conducted pursuant to Federal law.⁵ The statute also authorizes the Secretaries concerned to remit or cancel for good cause the liability charged to any National Guard member determined under the statute.⁶ Note this authority contrasts with the general remission authority of the Secretaries with respect to any debts of *enlisted* members of the active components.⁷

The remainder of the revisions arise out of experiences over the past two years and are not necessarily reflective of any overall policy changes. Of these, a significant change for judge advocates is the expansion of the definition of the term "loss."⁸ The expanded definition makes clear that the losses referred to in the regulation are losses from government *accountability*. Previously, approving authorities were of the impression that members could not be held liable for lost property, if there was no evidence explaining the physical loss of the property, even though there was ample evidence showing the point in time when the property was lost from government accountability. The expanded definition of "loss" will clarify that physical disappearance of property may or may not coincide with

loss from accountability, but that it is the loss from accountability that should be addressed in the report of a survey. The expanded definition is designed to preclude reports of survey in which members are held pecuniarily liable for losses of property solely because they were "signed for the property," but where there was no evidence of negligence causing the loss from accountability.

The regulation has been changed to clarify that certain qualified civilians may act as approving authorities on reports of survey. Clarified, too, is the notion that approving authorities may, in appropriate circumstances, act as appointing authorities. The appointing authority may also act as surveying officer, provided he or she is not the approving authority and meets the qualifications of surveying officers.⁹

The references to "personal," as opposed to "nonpersonal," responsibility have been removed from the regulation. It appeared that the distinction resulted in no difference in property accountability determinations.

The one-month's pay ceiling on liability for losses of Government funds by other than disbursing officers has been removed. Individuals may now be held pecuniarily liable for the full value of such money losses, where their negligence caused the loss.¹⁰

New procedures have been prescribed for surveying officers to reestablish accountability for property recovered during an investigation of the loss of government property.¹¹ The target processing times for reports of survey have been clarified. The number of days to be counted in processing the reports refers to *calendar* days; any need to exceed the processing time must be clearly documented. It is not intended, however, that failure to meet the prescribed processing goals be the basis for relieving an individual of liability for lost property.¹²

³ Paragraph 4-17b(3), AR 735-11, 15 September 1981. Hereafter, all references to AR 735-11 will be to the newly published revision, unless otherwise stated.

⁴ 32 U.S.C. §710(c)(2).

⁵ See, 32 U.S.C. §710(c)(2), and S. Rep. No. 96-849, 96th Cong., 1st Sess. (July 16, 1980).

⁶ 32 U.S.C. §710(c).

⁷ 10 U.S.C. §4837(d) and 10 U.S.C. §9837(d). The legislative history of Pub. L. No. 96-328 would suggest that Congress was not aware of the differences in remission and cancellation authority it created. See, S. Rep. No. 96-849, *supra*, at p. 1.

⁸ Paragraph 1-6t, AR 735-11.

⁹ Paragraphs 1-6d(4), 1-6e(8), 4-5a, and 4-5b, AR 735-11.

¹⁰ Paragraph 4-17b(2), AR 735-11.

¹¹ Paragraph 4-9, AR 735-11.

¹² Paragraph 3-5, AR 735-11.

The depreciation instructions have been greatly expanded to give more accurate and detailed information for allotting depreciated allowances to individuals held pecuniarily liable under the regulation.¹³

The provisions for establishing and calculating charges in cases of joint and several liability have been included in the revision. This information was previously published in a change.¹⁴

The provisions concerning legal review of reports of survey have been clarified to dispel a misunderstanding that has apparently existed at some installations. As long as different attorneys perform the two reviews required in the processing of a report of survey (one at the time an individual is sought to be held liable and one at the time of appeal, if any), there is no ethical bar to the reviews being physically performed in the same JAGC office. Of course, it would be preferable to have the reviews performed in different offices, but it is recognized that this is not always possible.¹⁵

The reconsideration and appeal procedures have been unified, so that a request for reconsideration, if not granted, will automatically be treated as an appeal, thus obviating the necessity for sending the survey back down the "chain" only to have it returned as an appeal.¹⁶ The appeal procedures have also been broadened to permit former members and employees to appeal reports of survey under the AR 735-11 appeal procedures.¹⁷ Formerly, it was intended that only current members and employees could appeal under the regulation, because the appeal authority would have little or no interest in individuals no longer within that authority's "jurisdiction." It should be noted, too, that the

revision of this portion of the regulation is intended to make clear that the AR 735-11 procedures for reconsideration, appeal, and reopening are to be the exclusive procedures for seeking review of reports of survey.¹⁸ The sole exception to this general policy are those procedures, prescribed pursuant to AR 600-4, applicable to enlisted members who desire to seek remission or cancellation of indebtedness.¹⁹ Nothing in the regulation is intended to limit a member's right to seek review under the provisions of AR 15-185.²⁰

DA Form 4696 (Government Property Lost or Damaged) has been merged with DA Form 4697 (Department of the Army Report of Survey). Essentially, the first page of the revised form will be used as the current DA Form 4696 is used. Where there is evidence of negligence, the second page of the form should be utilized.

Two new chapters have been added. Chapter 9, dealing with losses of wholesale stock at DARCOM facilities, and Chapter 10, dealing with discrepancies incident to shipment of property by common or contract carriers, are now included in the basic regulation.

The previous AR 735-11 contained provisions for mutual enforcement of reports of survey between the Army and the Air Force.²¹ The Air Force regulatory counterpart to the Army regulation has been deleted. A new reciprocal agreement has been staffed and will be signed shortly, authorizing limited mutual enforcement of reports of survey. The implementation of the agreement will be published in a change to the new AR 735-11.

¹³ Paragraph 4-19c, AR 735-11.

¹⁴ See, paragraph 4-18, AR 735-11.

¹⁵ Paragraph 4-24d, AR 735-11.

¹⁶ Paragraph 5-5f, AR 735-11.

¹⁷ Paragraph 5-4b, AR 735-11.

¹⁸ Paragraph 5-1c, AR 735-11.

¹⁹ AR 600-4, Remission or Cancellation of Indebtedness—Enlisted Members, 1 August 1981.

²⁰ AR 15-185, Army Board for Correction of Military Records, 18 May 1977.

²¹ See, paragraphs 8-3b and 8-4b, AR 735-11, 15 October 1978.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan



SQT—1981 Final Test Results

The 1981 final test results are encouraging. The results show that job performance has improved since the 1980 test. I attribute this improvement to good training programs, rotation of personnel to gain experience, and a better line of communication between the field, MACOM, and our SQT developer at Fort Benjamin Harrison, IN.

Overall Score Averages

71 D	1981	1980
Skill Level-1, E1-E4	71.31%	64.09%
Skill Level-2, E5	79.20%	73.31%
Skill Level-3, E6	79 %	78.08%

Hands-On Test

71 D	1981	1980
Skill Level-1, E1-E4	85.5%	63.1%
Skill Level-2, E5	90.3%	79.3%
Skill Level-3, E6	93.2%	83.4%

Breakdown by Tracks

E1-E4 (71D)	1981	1980
Track 1 Common Admin:	84.1%	63.1%
Track 2 Court-Martial		
Proceeding:	86.7%	*
Track 3 Claims Proceeding:	85.7%	*
E5 (71D)	1981	1980
Track 1 Common Admin:	86%	79.3%
Track 2 Court-Martial		
Proceeding:	89.8%	*
Track 3 Claims Proceeding:	95%	*

E6 (71D)

	1981	1980
Track 2 Common Admin:	86%	83.4%
Track 2 Court-Martial		
Proceeding:	89.0%	*
Track 3 Claims Proceeding:	94.7%	*

*No average scores from 1980 available.

Records of Trial Forwarded for Appellate Review

The Records Control and Analysis Branch (JALS-CCR), Office of the Clerk of Court, has indicated that after the Legal Clerk/Court Reporter Workshop, held at Fort Carson, CO, in April 1981, the quality of administrative processing of courts-martial was much improved. Most legal clerks are following the guidance provided in the handout, Administrative Guide for Appellate Matters, which was furnished at the workshop. Improvements in assembly of records of trial, accuracy in publication of initial promulgating and final supplementary court-martial orders, and USACMR decision service on the accused are noticeable. Legal clerks and court reporters are to be commended for their response to this important area of their duties. You are encouraged to keep up the good work with a view toward constant improvement through utilization of this valuable guide.

Criminal Law News

Criminal Law Division, TJAGSA

Amendment of MCM—Involuntary Excess Leave

SJA's are reminded that the recent legislation provides that only in those cases in which the convening authority took action under Articles 64

or 65, UCMJ, on or after 20 January 1982, may an accused be placed on involuntary excess leave. Persons whose sentences were approved by the convening authority before 20 January 1982 may not be placed on excess leave involuntarily.

Changes to Court Rules

The United States Court of Military Appeals has changed a number of its rules of practice and procedure. The changes reflect recent amendments to the UCMJ and affect Court of Military Review decisions dated on or after 19 January

1982. Included in the changes are provisions for constructive service of Court of Military Review decisions upon an accused, as well as an increase in the time period for filing petitions for review of these decisions (from thirty to sixty days). The rules changes will be published in a future volume of the Military Justice Reporter.

Non-Judicial Punishment

**Quarterly Court-Martial Rates Per 1000
Average Strength
July-September 1981**

	Quarterly Rates		Quarterly Rates
ARMY-WIDE	48.24	Eighth US Army	57.97
CONUS Army commands	50.92	US Army Japan	
OVERSEAS Army commands	43.71	Units in Hawaii	34.56
USAREUR and Seventh Army commands	43.52	Units in Alaska	27.74
		Units in Panama	53.50

Non-Judicial Punishment

**Quarterly Court-Martial Rates Per 1000 Average Strength
July-September 1982**

	GENERAL CM	SPECIAL CM		SUMMARY CM
		BCD	NON-BCD	
ARMY-WIDE	.49	.77	.65	1.48
CONUS Army commands	.32	.65	.61	1.70
OVERSEAS Army commands	.75	.97	.70	1.09
USAREUR and Seventh Army commands	.83	1.07	.62	.97
Eighth US Army	.77	.47	1.21	1.35
US Army Japan				
Units in Hawaii	.27	1.04	.87	.87
Units in Alaska	.35	.35	.82	3.29
Units in Panama	.27	.83	.97	2.36

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

A Matter of Record

Notes from Government Appellate Division, USALSA

Trial counsel should be aware that the evidence permitted in aggravation is not limited to the traditional type of aggravation evidence listed in paragraph 2-20, Army Regulation 27-10, Military Justice (26 November 1968 as changed through C. 21, 15 September 1981. In *United States v. Hood*, CM 441047 (A.C.M.R. 28 January 1982), the trial counsel used a CID agent to establish the value of the property the accused stole and the value of the items on the black market (\$50,000). Because the accused was a senior noncommissioned officer eligible for retirement, the trial counsel faced an uphill battle in convincing the court members that a discharge was an appropriate punishment. The trial counsel effec-

tively used a chart to compare the value of the accused's retirement income over his life expectancy to the value of the accused's ill-gotten gains if invested in a prudent manner. This comparison revealed that the retirement was worth \$240,000.00 while the value of the invested ill-gotten gains was in excess of \$3.0 million. Faced with this type evidence, the court sentenced the accused to a dishonorable discharge, confinement for eight years, total forfeitures, reduction to E-1, and a \$10,000.00 fine. As the *Hood* case amply demonstrates, an effective sentencing presentation by trial counsel can materially affect the sentence adjudged.

JUDICIARY NOTES

US Army Legal Services Agency

Convening Authority's Action. In the examination of cases under Article 69, UCMJ, the following errors in the ACTION have been noted.

a. If the sentence has been properly ordered into execution, the ACTION should *not* state: "The forfeitures shall apply to pay becoming due on and after the date of this action."

b. When a place of confinement is designated, the language prescribed in paragraph 4-2c, AR 190-47, should be used. Thus, when a sentence to confinement is approved and ordered executed, the following words should be used: "The

accused will be confined in (name of facility) and the confinement will be served therein or elsewhere as competent authority may direct."

Court-Martial Convening Orders. When a commander is designated by the Secretary of the Army, pursuant to Article 22(a)(6), UCMJ, to convene general courts-martial, the convening authority should cite the current authorization in the first paragraph of the order. The authorizations are set forth in HQDA General Orders Numbers 3 and 10, dated, respectively, 19 January 1981 and 9 April 1981.

Legal Assistance Items

*Major Joel R. Alvarey, Major Walter B. Huffman, Major John F. Joyce, Captain Timothy J. Grendell, and Major Harlan M. Heffelfinger
Administrative and Civil Law Division, TJAGSA*

Military Family Resource Center

The Military Family Resource Center (MFRC) is an international center to support family advocacy in the military services and to assist professionals who provide help to military people and their families around the world. The MFRC has

been funded as a three-year demonstration project under a grant from the National Center for Child Abuse and Neglect under the auspices of the Armed Services Department of the YMCA of the USA. The MFRC has the support and cooperation of the Department of Defense and each of the services. The center's goals are to:

- Raise professional awareness for military family advocacy;
- Provide information and technical help to those who serve military families;
- Strengthen cooperation between military and civilian agencies;
- Promote a multidisciplinary approach in family advocacy programs;
- Enhance interservice cooperation; and
- Support programs that strengthen the military family.

The MFRC maintains a library of publications concerning family programs and training activities which are available to professionals who assist service personnel and their families.

A quarterly newsletter is published by the MFRC as a means of gathering and communicating mutually beneficial information and ideas, and to encourage the exchange of ideas and programs which will affect military families in a positive way. The Legal Assistance Branch, TJAGSA, has arranged to have this newsletter sent to all Army legal assistance offices.

The MFRC operates a toll-free telephone line which is available to military activities in CONUS, Alaska, and Hawaii. The line is for use by professionals, such as legal assistance officers, who would like assistance in obtaining information or material. The number is (800) 336-4592. In Virginia, call (703) 922-7671.

Retired Members—Retirement Pay

The Court of Appeals for the Fourth Supreme Judicial District of Texas, San Antonio, in *Ex Parte Buckhanan*, No. 04-81-00243-CV (Oct. 15, 1981), granted a writ of habeas corpus and discharged a retired servicemember from confinement for his failure to pay a portion of his retired pay to his ex-wife under the terms of his divorce decree. The appellate court, citing the US Supreme Court's opinion in *McCarthy v. McCarthy*, 101 S. Ct. 2728 (1981), held that the trial court's power to subject the retiree's pay to division as community property was preempted by federal statute and the supremacy clause.

Buckhanan and his former spouse were divorced in May 1977. The divorce decree required

him to pay approximately \$468.00 of his retired pay to his ex-wife. Buckhanan paid only \$300.00 per month to her from October 1980 through May 1981, when he terminated making payments altogether. Contempt proceedings were initiated and Buckhanan was found in contempt and ordered confined on 2 September 1981. He sought relief by initiating a writ of habeas corpus with the Court of Appeals.

Buckhanan's application for relief was a collateral attack upon a final judgment. Under Texas law, this action could succeed only if the adjudication of the divorce decree was beyond the power of the trial court. In determining the effect of *McCarty* on a prior judgment under collateral attack, the Texas Appellate Court opined that the Supreme Court in *McCarty* "preempted nothing; it only considered, determined, and announced what Congress had already done." The court concluded that the trial court lacked jurisdiction to divide the military pension because Congress preempted state authority in this area prior to the adjudication of the divorce. The court not only discharged Buckhanan from responsibility for any payments subsequent to the date of the *McCarthy* decision, it also absolved him of liability for the arrearages accumulated during the period prior to that date.

Ex Parte Buckhanan could have far reaching effects for military retirees in Texas. The decision upholds the right of a retiree in Texas to unilaterally terminate the payment of retired pay to his or her former spouse pursuant to the terms of a divorce decree and raises the specter of possible counter suits by retirees against their former spouses to recoup previously paid portions of retired pay.

Extended Hours

Many legal assistance offices offer extended hours of operation to insure legal counsel is available to all servicemembers. Some of these offices remain open in the evening one day a week, while others are open on Saturdays. Several offices have effectively utilized reserve Judge Advocates as legal assistance officers during extended hours of operation. Chiefs of legal assistance offices who are not offering extended hours of op-

eration should consider doing so. It is important that servicemembers who are unable to seek legal assistance during regular duty hours because of mission requirements do have the opportunity to consult with counsel regarding their personal legal problems.

Dependents—VHA Not Includable With BAQ Under AR 608-99

The Military Personnel and Compensation Amendment Act of 1980 (Pub. L. 96-343) authorized the payment of a variable housing allowance (VHA) based on rank and geographic location for service personnel to defray high housing costs. Since the authorization of the VHA, the question of its inclusion with the Basic Allowance for Quarters (BAQ) in determining minimum support requirements under paragraph 2-2(c), AR 608-99, has been the subject of debate.

The Office of the Deputy Chief of Staff for Personnel (DCSPER) and the US Army Military Personnel Center (MILPERCEN), proponent of AR 608-99, have concluded that VHA is not includable with BAQ in determining the minimum support requirement in the absence of a court order under AR 608-99. This decision was based on the determination that VHA only concerns housing costs and does not pertain to support of dependents. AR 608-99 will not be revised to incorporate the VHA as part of a servicemember's

minimum support obligation. Therefore, a spouse of a servicemember must obtain a court order before the servicemember will be required to provide support payments in an amount in excess of the BAQ at the rates prescribed for members with dependents in Chapter 2 of the Department of Defense Military Pay and Allowances Manual.

Truth-in-Lending—Annual Report to Congress for the Year 1981

The Thirteenth Annual Report of the Federal Reserve Board detailing its Truth-in-Lending activities over the past year was recently submitted to Congress. It included coverage of the Board's administration of its functions under the Act and an assessment of the extent of the Truth-in-Lending Act's compliance by creditors. The compliance data is of particular importance to legal assistance attorneys. Client's disclosure statements may be expected to have similar disclosure violations.

The most frequent violations involve the (1) failure to use required terms such as "total of payments" and "balloon payment," (2) failure to disclose properly the payment schedule, (3) failure to disclose the correct annual percentage rate or finance charge, (4) failure to properly disclose the "amount financed" using that term, and (5) failure to adequately describe property that secures credit.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

(Military Installations—Regulations) Acceptance Of Electronic Locator Board Which Contains Paid Advertising Would Violate AR 405-80. DAJA-AL 1981/3763 (22 September 1981).

The Office of Chief of Engineers requested TJAG's comments as to whether an exception to paragraph 242, AR 405-80 should be granted to allow the acceptance by an installation of a no-cost-to-the-government electronic locator board containing paid local advertisements.

Para. 2-12, AR 405-80, provides that: "DA will not authorize the posting of notices or erection of billboards or signs for commercial purposes on property under its control." This policy is apparently prompted by the desire to insure that DA will not selectively benefit or endorse any commercial product (see para. V.B.2, DOD Directive 5410.18). In view of the foregoing, TJAG pointed out that if a exception to policy were granted, exception to policy would also have to be obtained to the DOD regulatory authority.

(Article 138 Complaint) Commander's Authori-

ty To Order Soldier To Remove Confederate Flag From Barrack's Room Wall. DAJA-AL 1981/3344 (26 August 1981)

In reviewing a complaint filed under Article 138, UCMJ, TJAG rendered an opinion on the commander's authority to order a soldier to remove a Confederate flag hanging on a barrack's room wall.

Two sergeants were roommates in the barracks of an armored battalion stationed at a CO-NUS post. In the barracks room, each hung a Confederate flag, one as a souvenir from Gettysburg National Monument and the other because the flag was a symbol of the State of Georgia "where he received his United States Citizenship." While conducting an inspection of the billets, the brigade sergeant major noticed the flags and commented to the sergeants' platoon sergeant that the flags might be offensive to some people. The platoon sergeant ordered the sergeants to remove the flags and they appealed the order to their first sergeant. The next day, their platoon leader directed the flags be removed from the wall. The sergeants removed the flags from the wall, one placing his on the bunk and the other hanging it on the window. Shortly thereafter, the respondent company commander noticed the Confederate flag in the sergeants' window and ordered the sergeants to remove the flag from the window. The company commander was unaware at the time of what had transpired earlier that day and the order from the platoon leader. The sergeants immediately complied but filed a request for redress citing as the wrong the order to remove the Confederate flag and asking as redress rescission of the order prohibiting the display of the Confederate flags in their billets room. The company commander denied the request for redress and the sergeants then filed a formal complaint of wrong under Article 138, UCMJ.

The GCM convening authority (GCMCA) appointed an investigating officer who conducted an extensive investigation. He found that the sergeants' room was not used as a counseling room nor as a place where soldiers reported to the sergeants. Although soldiers did enter the room to ask questions of the sergeants, none of the indi-

viduals found the flags objectionable enough to cause a problem in the unit. The investigating officer concluded that the order to remove the flags from the walls was in violation of the constitutional rights of the soldiers involved and recommended that the complainant be permitted to rehang the flag as a decoration. He further recommended that if the flag is rehung, the chain of command monitor the situation for any reactions to the flag which would endanger unit morale, loyalty, or discipline.

The GCMA, in his action, stated he concluded from the investigating officer's report that the Confederate flag remains a symbol of racial discrimination to some members of the military community. He denied the requested redress stating that symbols of racial discrimination have no place in the barracks of his division. He also stated that he made this determination fully cognizant of the fact that the investigating officer found no overt bases of a present danger to unit discipline, morale, or loyalty.

TJAG, in conducting a final review of the complaint UP AR 27-14, concluded that the Confederate flag by itself is not an illegal symbol of racial discrimination but that the flag may be displayed in a discriminatory manner. Citing Federal court cases, TJAG concluded that it is necessary to base the prohibition on display of the flag not on a mere apprehension of disturbance by the use of the flag, but on evidence indicating a substantial probability of disruption or violence if the flag is presented in a certain manner.

Although the standard may be different in a military community where persons from many races, religions and beliefs live together closely and must have complete faith in an unfettered loyalty for a fellow unit member to achieve an effective fighting unit, TJAG states there must be more than a mere apprehension of disturbance by the use of the flag to arrive at the conclusion that it is a symbol of racial discrimination. The report of investigation disclosed no evidence to support such a finding. However, TJAG further concluded that in the military, flags and colors are specific symbols of the spirit and tradition of the organization represented. The use and display of

flags is regulated carefully to insure that they are exhibited properly in a manner reflecting the traditions they represent. AR 840-10 prescribes the correct display and use of flags in the military. This regulation specifically prohibits the display of any flag not described in the regulation (para. 1-6a, AR 840-10). The Confederate flag is not described. Furthermore, the regulation specifically prohibits the private use or display of any organizational colors or distinguishing flags. The TJAG concluded that the General Court-Martial Convening Authority's action refusing the complainant's request to display his Confederate battle flag in his billets room was correct although for a different reason (the provisions of AR 840-10).

(Enlisted Personnel-Reduction) *The Authority To Administratively Reduce Enlisted Personnel UP Paragraph 8-3c(1)(b), AR 600-200, For A Civil Court Conviction Of Certain Specified Crimes If Sentencing Is Delayed For More Than 30 Days, Exists Only During The Period Between Conviction And Sentencing. DAJA-AL 1981/3631 (24 Sep 81).*

An installation commander reduced a servicemember from staff sergeant to private E-1 based upon a state court conviction of four felonies. The servicemember was found guilty in April 1981. Documentation of his conviction was not received by his unit until July 1981 and, on 7 July 1981, was forwarded to the commander with a recommendation that reduction be delayed until after sentencing which was scheduled for 27 July 1981. The SJA concurred in this recommendation, noting that if the sentence was one year or more, no board action was necessary. Reduction was delayed and the servicemember was sentenced to seven months in a work release program.

After sentencing, the proponent of AR 600-200 was questioned about the propriety of the delay in reducing the servicemember. The proponent advised that the commander should not have delayed reduction, and that he could rescind that decision and reduce the servicemember retroactively. Based on this advice, the commander ordered the servicemember's reduction UP paragraphs 8-1b and 8-3c(1)(b), AR 600-200, effective 7 July 1981.

The servicemember appealed his reduction, arguing that reduction authority UP paragraph 8-3c(1)(b), AR 600-200, exists only between the date of his conviction and the date of his sentencing. The proponent argued that this paragraph required the commander to reduce the servicemember immediately, and that he had no alternative but to reduce the servicemember retroactively to the date documentary evidence of the conviction was received (7 July 1981).

In response to a request for an opinion, The Judge Advocate General opined that paragraph 8-3c(1)(b), AR 600-200, allows a commander immediately to reduce enlisted personnel convicted by a civil court of certain specified crimes if sentencing is delayed for more than 30 days. When read in conjunction with paragraph 8-3c(1)(a) and 8-3c(2), it is clear that this authority exists only during the period between conviction and sentencing. After sentencing, reduction can be accomplished only in accordance with other applicable provisions (i.e., paragraph 8-3c(1)(a), 8-3c(1)(c), and 8-3c(2), AR 600-200).

In light of the above, The Judge Advocate General opined that the order reducing the servicemember was void, and that the servicemember may be considered for reduction UP paragraph 8-3c(2) or (3), AR 600-200, as appropriate.

(Military Installations—Solicitation) *The Army May Not Suspend An Agent And/Or Company Permanently From Soliciting On All DA Installations. DAJA-AL 1980/3171 (3 December 1980).*

The Adjutant General requested a legal opinion from the Judge Advocate General as to whether TAGO could permanently bar an agent and/or company from soliciting on all Army installations under AR 210-7.

Noting that para. 4-7, AR 210-7, permits suspension for only a specific time period, and further noting that this provision is based upon para. III C2e, DOD Dir. 1344.7, which allows suspension only for a set period of time, TJAG opined that TAGO could not permanently suspend an agent and/or company absent a change to the DOD Directive.

(Dependents—Privileges) Military Members Cannot Be Held Liable For The Acts Of Their Dependents Who Write Dishonored Checks To The Commissary. DAJA-AL 1981/2627 (28 April 1981).

The Deputy Chief of Staff for Logistics requested an opinion from The Judge Advocate General as to how or whether a SM could be held liable for the act of a dependent who wrote a dishonored check to the commissary. As a general

proposition, TJAG noted that a SM may not be held liable for the acts of a dependent unless the dependent acts as the agent for the SM. A change in policy regarding use of the commissary by dependents (as a class authorized to use the commissary in their own right) clearly shows that dependents no longer use the commissary as the agent of the sponsor. DOD Directive 1330.17 and AR 30-19. Therefore, a sponsor may not be held liable for the act of a dependent in writing a dishonored check to the commissary.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. Selection of Reserve Officers for Senior Service Colleges

A Headquarters, Department of the Army selection board convenes each year, usually in August, at the Reserve Components Personnel and Administration Center in St. Louis, to consider eligible officers for selection to attend senior service colleges. Those selected begin their course of study the following year. The same board selects both resident and non-resident students. Individual branches are not assigned quotas. Selection is on a best qualified, branch immaterial basis. In order to be considered by the next board, applications must be received at the Reserve Components Personnel and Administration Center not later than 7 May 1982.

Applications should be submitted through the chain of command. For unit officers, the chain of command runs from the individual's unit, through ARCOM, Army Headquarters (First, Fifth, or Sixth), and FORSCOM, to RCPAC. MOBDES officers should submit their applications through their parent unit to RCPAC. Recommendations on behalf of officer applicants will not be considered or accepted unless they are from within the applicant's chain-of-command.

All applications will be initially screened by the Officer Branch, RCPAC, for completeness. When all the files are ready for consideration, the selection board will convene.

2. Reserve ID Cards

The Judge Advocate General's School does not issue Reserve Component ID cards. A Reserve officer who needs an ID card should follow the procedure outlined below:

1. Fill out DA Form 428 and forward it to Commander, U.S. Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-PSE-VC, 9700 Page Boulevard, St. Louis Missouri 63162. Include a copy of recent AT orders or other documentation indicating that applicant is an actively participating Reservist.

2. RCPAC will verify the information and the individual's entitlement, prepare an ID card, and send it back to the Reservist.

3. The Reservist must sign it, affix fingerprints, attach an appropriate photograph, and return the materials to RCPAC.

4. RCPAC will affix the authorizing signature and laminate the card, and will send the finished card to the applicant. Also inclosed will be a form receipting for the ID card.

5. Applicant must execute the receipt form and send it to RCPAC.

3. Training of Mobilization Designees

Orders for MOBDES Active Duty tours will be requested through the installation Director of

Reserve Components to Reserve Components Personnel and Administration Center, ATTN: AGUZ-OPM-T/MOBDES Tng Coord, 9700 Page Boulevard, St. Louis, MO 63132. It is essential that tours are coordinated well ahead of time and ideally prior to the beginning of each fiscal year.

AR 140-145 incorporates policies relative to the selection, assignment, and training of Mobilization Designees. Responsibilities of the propo-

nent agencies are described in detail (para 4-4) and include the coordination of annual training dates with the MOBDES officer. In this context, the proponent agency is the office to which the individual is assigned for training. A close and continuing liaison throughout the year with the MOBDES officer is the responsibility of the proponent agency. This will help insure that AT tours are challenging and productive.

Videocassettes Available from TJAGSA

The Television Operations Office of The Judge Advocate General's School announces an update to the August 1981 Audio and Video Tape Catalog. The programs listed below are additions or

deletions, as indicated. Blank video tapes, in the appropriate lengths are required to obtain copies of these programs:

New Tapes Available

1982 CONTRACT LAW SYMPOSIUM (11-15 January 1982)

		<i>Running Time</i>
JA-130-1	NEGOTIATION PROCEDURES, PART I Guest Speaker: Professor Ralph Nash, George Washington School of Law.	56:00
JA-130-2	NEGOTIATION PROCEDURES, PART II A continuation of JA-130-1.	56:00
JA-130-3	NEGOTIATION PROCEDURES, PART III A continuation of JA-130-1 and JA-130-2.	31:00
JA-130-4	LABOR PROBLEMS IN THE CITA PROGRAM, PART I Guest Speaker: Colonel Robert Nutt, Chief, Labor and Civilian Personnel Law Office, Office of The Judge Advocate General, Department of the Army.	51:00
JAV-130-5	LABOR PROBLEMS IN THE CITA PROGRAM, PART II A continuation of JA-130-4.	36:00
JA-130-6	PROBLEMS AND LEGISLATION IN GOVERNMENT CONTRACTS, PART I Guest Speaker: Honorable Beverly Bryon, U.S. House of Representatives (D-MD).	31:00
JA-130-7	PROBLEMS AND LEGISLATION IN GOVERNMENT CONTRACTS, PART II A continuation of JA-130-6.	56:00
JA-130-8	LABOR PROBLEMS IN GOVERNMENT CONTRACTS AND NEW REGULATORY CHANGES, PART I Guest Speaker: Mr. William Blackburn, Wage and Hour Division, U.S. Department of Labor.	62:00
JA-130-9	LABOR PROBLEMS IN GOVERNMENT CONTRACTS AND NEW REGULATORY CHANGES, PART II A continuation of JA-130-8.	18:00
JA-130-10	CONSTRUCTION CONTRACTING, PART I Guest Speaker: Mr. T. J. Kelleher, Smith, Currie, & Hancock, Atlanta, Georgia.	55:00

	<i>Running Time</i>
JA-130-11	CONSTRUCTION CONTRACTING, PART II A continuation of JA-130-10. 42:40
JA-130-12	SETTLING CLAIMS, PART I Guest Speaker: Lieutenant Colonel Dale Martin, (MOBDES—Contract Law Division), Barokis & Martin, Seattle, Washington. 56:00
JA-130-13	SETTLING CLAIMS, PART II A continuation of JA-130-12. 46:00
JA-130-14	CONTRACT DISPUTES, PART I Guest Speaker: Mr. Eldon Crowell, Crowell & Moring, Washing- ton, DC. 56:00
JA-130-15	CONTRACT DISPUTES, PART II A continuation of JA-130-14. 36:00
JA-130-16	CONTRACT DISPUTES, PART I Guest Speaker: Mr. Rollin A. Van Broekhoven, Administrative Judge, Armed Services Board of Contract Appeals. 52:00
JA-130-17	CONTRACT DISPUTES, PART II A continuation of JA-130-16. 52:00
JA-130-18	INTELLECTUAL PROPERTY, PART I Guest Speaker: Lieutenant Colonel Neil K. Nydegger, Chief, Con- tracts and Opinions Branch, Intellectual Property Division, Office of The Judge Advocate General. 48:00
JA-130-19	INTELLECTUAL PROPERTY, PART II A continuation of JA-130-18. 43:00
JA-130-20	BUSINESS CONFIDENTIAL DATA, PART I Guest Speaker: Mr. Edward C. Shomaker, Attorney, U.S. Nucle- ar Regulatory Commission, Washington, D.C. 53:00
JA-130-21	BUSINESS CONFIDENTIAL DATA, PART II A continuation of JA-130-20. 48:00
JA-130-22	DEBARMENT AND SUSPENSION, PART I Guest Speaker: Lieutenant Colonel John S. Miller, (MOBDES—Contract Law Division), Office of General Counsel, General Services Administration. 49:00
JA-130-23	DEBARMENT AND SUSPENSION, PART II A continuation of JA-130-22.
JA-130-24	THE IG'S VIEW OF FRAUD, WASTE, AND ABUSE IN GOV- ERNMENT CONTRACTS, PART I Guest Speaker: Major General Robert Solomon, Deputy The In- specter General, U.S. Army. 56:00
JA-130-25	THE IG'S VIEW OF FRAUD, WASTE, AND ABUSE IN GOV- ERNMENT CONTRACTS, PART II A continuation of JA-130-24. 18:00
9TH LEGAL ASSISTANCE COURSE (16-20 November 1981)	
JA-279-1	ABA LAMP COMMITTEE UPDATE Guest Speaker: Mrs. Mary Ellen Hanley, Chairperson of the Standing Committee on Legal Assistance for Military Personnel of the American Bar Association, discusses the origin, history, and 31:00

Running Time

	goals of that organization as well as the malpractice liability of the individual military attorney.	
JA-279-2	INDIVIDUAL LIABILITY, PART I Guest Speaker: Mrs. Mary Ellen Hanley, Seattle, Washington.	15:00
JA-279-3	INDIVIDUAL LIABILITY, PART II A continuation of JA-279-2.	53:00
JA-279-4	INTERVIEWING AND COUNSELING, PART I Guest Speaker: Professor Richard B. Tyler of the University of Missouri discusses techniques of interviewing clients and application of those techniques to the military legal assistance setting.	48:00
JA-279-5	INTERVIEWING AND COUNSELING, PART II A continuation of JA-279-4.	46:00
JA-279-6	IMMIGRATION AND NATURALIZATION LAW, PART I Guest Speakers: Mr. Stan Davis and Mr. Keith Williams of the Immigration and Naturalization Service discuss the laws of immigration and naturalization of the United States.	45:00
JA-279-7	IMMIGRATION AND NATURALIZATION LAW, PART II A continuation of JA-279-6.	45:00

10TH DEFENSE TRIAL ADVOCACY COURSE (November 1981)

JA-359-1	GENERAL PRINCIPLES OF TRIAL ADVOCACY, PART I Guest Speaker: Lieutenant Colonel (P) Leroy Foreman, Associate Judge of the United States Army Court of Military Review, presents a lively and entertaining overview of the basic principles of effective trial advocacy. Colonel Foreman calls upon numerous extracts from actual trial transcripts in order to illustrate essential points. This is an excellent start point for any lawyer interested in pursuing the basic art of trial advocacy.	54:00
JA-359-2	GENERAL PRINCIPLES OF TRIAL ADVOCACY, PART II A continuation of JA-359-1.	40:00
JA-359-3	DEFENSE TRIAL ADVOCACY, PART I In this tape Mr. Edward J. Bellen expands upon his previous presentation concerning defense trial advocacy. Although there is some repetition from his previous lecture, Mr. Bellen calls upon different cases to illustrate his points pertaining to voir dire, argument, cross-examination and general trial practice.	47:00
JA-359-4	DEFENSE TRIAL ADVOCACY, PART II A continuation of JA-359-3.	44:00
JA-359-5	UNITED STATES V. KINSEY: A PRIMER FOR THE DEFENSE ADVOCATE, PART I In this offering Mr. Bellen discusses the preparation and trial of a complicated criminal case. Using the actual rape trial of <i>U.S. v. Kinsey</i> , Mr. Bellen analyzes every aspect of the case from review of the police reports to presentation of the defense. Mr. Bellen details how he formulated a defense theory and how all efforts were aimed at convincing the fact-finder to accept that theory. This presentation avoids the theoretical approach to trial practice and	52:00

Running Time

	provides the viewer instead with an invaluable look into the practicalities of presenting a successful affirmative defense.	
JA-359-6	<i>UNITED STATES V. KINSEY: A PRIMER FOR THE DEFENSE ADVOCATE, PART II</i>	40:00
	A continuation of JA-359-5.	
JA-449	<i>SOFA: CRIMINAL LAW JURISDICTION</i>	44:00
	Speaker: Major Sanford Faulkner, Instructor, International Law Division, TJAGSA. (October 1981)	

DELETIONS

JA-431 and JA-432 (STATUS OF FORCES AGREEMENTS—AN OVERVIEW, PARTS I & II—October 1978)
 JA-260-2 thru JA-260-4 (MILITARY PERSONNEL AND CIVILIAN EMPLOYEE'S CLAIMS ACT, PARTS I, II, & III—April 1979)

CORRECTIONS

JA-353 should be *JA-353-1* (RT: 36:00) and *JA-353-2* (RT: 29:00), Title: Tactics and Techniques in the Trial of a Criminal Case, Parts I and II.

CLE News**1. Resident Course Quotas**

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. Fourth Military Lawyer's Assistant Course. The 4th Military Lawyer's Assistant Course (512-71D/20/30) will be conducted at The Judge Advocate General's School during the period 12-16 July 1982. The course is open only to enlisted servicemembers in grades E-3 through E-6 and civilian employees who are serving as paraprofessionals in a military legal office, or

whose immediate future assignment entails providing professional assistance to an attorney. Attendees must have served a minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course NLT 12 May 1982. (No waivers will be granted.) Offices planning to send personnel must insure individuals are eligible before submitting names for attendance.

3. Contract Attorneys Three Day Workshop. As announced in last month's Army Lawyer, the 4th Contract Attorneys Workshop will be held at TJAGSA on 12-14 May 1982. Letters have recently been sent to contract attorneys' offices outlining the procedures on submitting problems for discussion. The deadline for problem submission is drawing near, so contract attorneys still interested are encouraged to send their problems in immediately. Limited quotas are available for attendees who will not present problems for discussion.

4. TJAGSA CLE Course Schedule

April 5-9: 65th Senior Officer Legal Orientation (5F-F1).

April 20-23: 14th Fiscal Law (5F-F12).

April 26-30: 12th Staff Judge Advocate (5F-F52).

May 3-14: 3d Administrative Law for Military Installations (5F-F24).

May 12-14: 4th Contract Attorneys Workshop (5F-F15).

May 17-20: 10th Methods of Instruction.

May 17-June 4: 24th Military Judge (5F-F33).

May 24-28: 19th Law of War Workshop (5F-F42).

June 7-11: 67th Senior Officer Legal Orientation (5F-F1).

June 21-July 2: JAGSO Team Training.

June 21-July 2: BOAC (Phase VI-Contract Law).

July 12-16: 4th Military Lawyer's Assistant (512-71D/20/30).

July 19-August 6: 25th Military Judge (5F-F33).

August 2-6: 11th Law Office Management (7A-713A).

August 9-20: 93rd Contract Attorneys (5F-F10).

August 16-May 20, 1983: 31st Graduate Course (5-27-C22).

August 23-27: 6th Criminal Trial Advocacy (NA).

September 1-3: 6th Criminal Law New Developments (5F-F35).

September 13-17: 20th Law of War Workshop (5F-F42).

September 20-24: 68th Senior Officer Legal Orientation (5F-F1).

October 5-8: 1982 Worldwide JAGC Conference.

October 18-December 17: 99th Basic Course (5-27-C20).

5. Civilian Sponsored CLE Courses

June

2-4: PLI, EEOC, San Francisco, CA.

3: ABICLE: Workmen's Compensation, Huntsville, AL.

3-4: ALEHU, Life Insurance in Business & Tax Planning, Bloomington, NM.

3-5: VACLE, Federal Taxation, Charlottesville, VA.

4: NYSBA, Estate Litigation, Syracuse, NY.

4: ABICLE, Workmen's Compensation, Birmingham, AL.

4-5: GICLE, Bankruptcy Practice, Columbus, GA.

4-5: GICLE, Law Office Management, Atlanta, GA.

4-11: NCDA, Executive Prosecutor Course, Houston, TX.

5: CCLE, Bankruptcy from a Creditor's Perspective, Colorado Springs, CO.

6-15: VACLE, NITA Trial Advocacy Course, Lexington, VA.

8-10: SLF, Psychological Issues in Law Enforcement, Dallas, TX.

10-11: ALEHU, Civil Trial Practice, Minneapolis, MN.

11: NYSBA, Estate Litigation, Buffalo, NY.

11: NYSBA, Trial of a Personal Injury Case, New York City, NY.

17: VACLE, Recent Developments in the Law, Virginia Beach, Va.

17: ABICLE, Workmen's Compensation, Mobile, AL.

18: ABICLE, Workmen's Compensation, Montgomery, AL.

20-25: ALIABA, Estate Planning in Depth, Madison, WI.

23: NYSBA, Will Drafting, New York City, NY.

25: GICLE, Incorp. the Law Firm, Atlanta, GA.

27-7/2: ALIABA, Environmental Litigation, Boulder, CO.

27-7/15: NCDA, Career Prosecutor Course, Houston, TX.

27-7/9: NJC, Non-Lawyer Judge—General, Reno, NV.

27-7/9: NJC, Special Court Jurisdiction—General, Reno, NV.

27-7/2: NJC, Evidence in Special Courts—Graduate, Reno, NV.

27-7/2: NJC, Sentencing Misdemeanants—Graduate, Reno, NV.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ABICLE: Alabama Bar Institute for Continuing Legal Education, Box CL, University, AL 35486

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

ALEHU: Advanced Legal Education, Hamline University School of Law, 1536 Hewitt Avenue, St. Paul, MN 55104

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

HLS: Program of Instruction for Lawyers, Harvard Law School, Cambridge, MA 02138

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210,

- 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.
- IPT:** Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.
- KCLE:** University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.
- LSBA:** Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.
- LSU:** Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.
- MCLNEL:** Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.
- MIC:** Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.
- MOB:** The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City MO 65102.
- NCAJ:** National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.
- NCATL:** North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.
- NCCD:** National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.
- NCDA:** National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.
- NCJFCJ:** National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.
- NCLE:** Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.
- NCSC:** National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203.
- NDAA:** National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.
- NITA:** National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104.
- NJC:** National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.
- NLADA:** National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452-0620.
- NPI:** National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).
- NPLTC:** National Public Law Training Center, 2000 P Street, N.W., Suite 600, Washington, D.C. 20036.
- NWU:** Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611.
- NYSBA:** New York State Bar Association, One Elk Street, Albany, NY 12207.
- NYSTLA:** New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.
- NYULT:** New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.
- OLCI:** Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.
- PATLA:** Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.
- PBI:** Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.
- PLI:** Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

Current Materials of Interest

1. Regulations

<i>Number</i>	<i>Title</i>	<i>Change</i>	<i>Date</i>
AR 27-1	Judge Advocate Legal Service	901	3 Feb 82
AR 27-10	Military Justice	904	8 Jan 82
AR 27-10	Military Justice	905	20 Jan 82
AR 135-100	Appointment of Commissioned and Warrant Officers of the Army	12	1 Feb 82
AR 140-158	Enlisted Personnel Classification, Promotion, and Reduction	8	15 Feb 82
AR 190-47	United States Army Correctional System	901	20 Jan 82
AR 210-65	Alcoholic Beverages		1 Feb 82
AR 600-33	Line of Duty Investigations	2	15 Jan 82
AR 600-80	Military Labor Organizations		1 Feb 82
AR 624-100	Promotion of Officers on Active Duty	904	1 Jan 82
AR 630-5	Leaves, Passes, Permissive Temporary Duty, and Public Holidays	4	15 Feb 82
DA Pam 310-1	Index of Administrative Publications		1 Dec 81
DA Pam 310-2	Index of Blank Forms		15 Dec 81
DA Pam 550-60	China: A Country Study		1981
DA Pam 608-33	Casualty Assistance Handbook	1	1 Feb 82

2. Articles.

Intramilitary Immunity and Constitutional Torts, Vol. 80, No. 2, Michigan Law Review

(Dec. 1981). Michigan Law Review, Hutchins Hall, Ann Arbor, Michigan 48109.

3. Superseded Army Publications

Superseded Army Publications may be obtained from the following sources:

—Army Library, Military Records Section,

Room 1A518, the Pentagon, Washington, D.C.
20310 (Tel. (202) 695-5535).

—National Archives, Modern Military Branch,
ATTN: Mr. Edwin Coffee, Washington, D.C.
20408 (Tel. (202) 523-3340).

DA Pam 27-50-111

By Order of the Secretary of the Army:

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

E. C. MEYER
General, United States Army
Chief of Staff

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